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SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-66511; File No. SR-NSX-2012-04)

March 5, 2012

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the NSX Fee and Rebate Schedule

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on March 1, 2012, National Stock Exchange, Inc. filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. ("NSX®" or "Exchange") is proposing to amend its Fee and Rebate Schedule (the "Fee Schedule") issued pursuant to Exchange Rule 16.1(c) to adjust the rebates for certain orders executed in the Exchange's Automatic Execution Mode, amend the fee tiers for certain orders executed in the Exchange's Order Delivery Mode, adjust the routing fee, and establish a fee for receipt of the Exchange's Depth of Book feed.

The text of the proposed rule change is available on the Exchange's website at http://www.nsx.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

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1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

With this rule change, the Exchange is proposing to modify the Fee Schedule in four respects. First, the proposed rule change would amend the rebates applicable to liquidity adding orders in securities priced at least one dollar in the Exchange's Automatic Execution Mode of order interaction ("AutoEx"). Second, the proposed rule change would amend the rebate tiers applicable to orders in securities priced at least one dollar in the Exchange's Order Delivery Mode of order interaction ("Order Delivery"). Third, the proposed rule change would increase the order routing fee from $0.0029 to $0.0030 per share. Finally, the proposed rule change would establish a fee applicable to direct recipients of the Exchange's Depth of Book ("DOB") feed. Each of the proposed changes is further addressed below.

Rebates for Securities Priced at Least One Dollar in AutoEx

The proposed rule change proposes to modify the rebates applicable to liquidity adding orders in securities priced one dollar or more in AutoEx. These changes can be found in Section I of the Fee Schedule.

Currently, for Tape A and C securities, the Exchange offers a rebate in AutoEx for displayed orders that add liquidity based upon an ETP Holder's Liquidity Adding ADV (as such term is defined in Endnote 3 of the Fee Schedule). For Tape A and C securities, the Exchange offers per share rebates of $0.0026 or $0.0029 depending on whether the ETP Holder has achieved a Liquidity Adding ADV of at least 10 million. For Tape B securities, the Exchange currently offers a rebate of $0.0030 per share. The proposed rule change would eliminate all rebate volume tiers in AutoEx and establish a flat $0.0026 rebate per share for liquidity adding orders of securities of at least one dollar, regardless of an ETP Holder's Liquidity Adding ADV or whether the security is Tape A, B or C. Corresponding edits are made to Endnote 3 to reflect the elimination of the distinction between Tapes A, B and C with respect to this rebate.

For Zero Display Orders (as defined in Endnote 4 of the Fee Schedule) that add liquidity in AutoEx, the Exchange currently offers a rebate of $0.0025 per share if an ETP Holder's Total ADV (as defined in Endnote 5 of the Fee Schedule) is at least 30 million and Liquidity Adding ADV is at least 5 million. The proposed fee change would eliminate this rebate altogether, such that there would be no rebate associated with such orders. The defined term "Total ADV" would also be deleted from Endnote 5 of the Fee Schedule as no longer utilized.

<u>Rebates for Securities Priced at Least One Dollar in Order Delivery</u>

As reflected in Section II of the Fee Schedule, for all liquidity adding displayed orders of securities priced at least one dollar in Order Delivery, the Exchange currently offers a $0.0008 or $0.0024 per share rebate depending on whether an ETP Holder's Liquidity Adding ADV is between one and 5 million, or over 5 million, respectively. The proposed rule filing would adjust these tiers and rebates such that an $0.0008 per share rebate would apply to each Order Delivery displayed order that adds liquidity where an ETP Holder's Liquidity Adding ADV is less than 15 million, or a $0.0024 per share rebate would apply to each such order where an ETP Holder's Liquidity Adding ADV is at least 15 million.

In addition, for Zero Display Reserve Orders in Order Delivery of securities priced at least one dollar, the current rebate tiers, depending on Liquidity Adding ADV, of between $0.0008 and $0.0012 is proposed to be eliminated. Thus, under the proposed rule change, for such orders no rebate will apply.

Order Routing Fee

Under Section IIIA of the Fee Schedule, the Exchange currently charges a fee of $0.0029 per share for each order routed by the Exchange and executed in another market center. The instant rule change proposes to increase the routing fee to $0.0030 per share.

Depth of Book Feed Charge

The Exchange is proposing to establish a monthly fee applicable to each direct recipient of its DOB feed, payable in advance. Prior to the effective date of the proposed rule change, NSX offered its DOB feed free of charge[3]. After the effective date, a monthly fee of $400 per direct recipient will be charged[4]. New text is proposed to be added as Section IIIC of the Fee Schedule under the header "Depth of Book Feed" to reflect this charge. This rule filing does not propose to change or modify the form, content or transmission of the NSX DOB feed, which except with respect to the proposed charge remains unchanged.

Rationale

The Exchange has determined that the fee changes proposed above are necessary to increase the revenues of the Exchange for the purposes of continuing to adequately fund its

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3 See Securities and Exchange Release No. 34-66007 (December 20, 2011), 76 FR 81000 (December 27, 2011) (SR-NSX-2011-015).

4 Direct recipients of the NSX DOB feed are firms that have entered into a Market Data Feed License Agreement with the Exchange, which agreement governs the terms of a firm's receipt, use and dissemination of the feed. This agreement can be found on the Exchange's website. See http://www.nsx.com/resources/content/2/4/documents/NSXDOBFeedSpecificationv111.pdf.

regulatory and general business functions and to enable the Exchange to continue to properly fulfill its regulatory responsibilities. In addition, the modification of the volume tiers for displayed orders in Order Delivery is intended to simplify the incentives available to ETP Holders to increase the available liquidity on the Exchange. The Exchange believes that the proposed Depth of Book change would allow the Exchange to recoup some of the expenses it incurs in developing and delivering the NSX DOB feed to the public market. Other market centers charge similar or higher rates for receipt of their proprietary data feeds.

Based upon the information above, the Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest.

Operative Date and Notice

The Exchange currently intends to make the proposed modifications, which are effective on filing of this proposed rule, operative as of commencement of trading on March 1, 2012. Pursuant to Exchange Rule 16.1(c), the Exchange will "provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange" through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's website (www.nsx.com).

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934[5] (the "Act"), in general, and Section 6(b)(4) of the Act,[6] in particular in that each change is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange.

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5 15 U.S.C. 78f(b).

6 15 U.S.C. 78f(b)(4).

With respect to the proposed changes in Section I of the Fee Schedule that establish a flat rebate for displayed orders, and elimination of the rebate for Zero Display orders, of securities priced at least one dollar in Auto Ex, such proposed changes are reasonable because they are in the same range of rebates offered by other exchanges[7]. The proposed changes are equitably allocated and not discriminatory as all qualified ETP Holders are eligible to submit (or not submit) orders of this kind on the Exchange, and all ETP Holders choosing to do so will be paid the same rebate.

With respect to the changes in Section II that modify the rebates received for displayed orders of securities priced at least one dollar in Order Delivery, such proposed rebates are reasonable because they do not adjust the dollar amount of the rebate but rather modify only the volume tiers necessary to achieve the applicable rebate. Such volume adjustments are reasonable methods to incentivize the use of such order type. For Zero Display orders, elimination of the rebate is a reasonable adjustment in relation to recent volumes of such order type on the Exchange. Additionally, all similarly situated members are subject to the same fee structure, and access to the Exchange is offered on fair and non-discriminatory terms. Volume-based rebates and discounts have been widely adopted in the equities markets, and are equitable because they are open to all members on an equal basis and provide rebates that are reasonably related to the value of an exchange's market quality associated with the requirements for the favorable pricing tier.

The proposed adjustment of the Order Routing Fee in Section IIIA of the Fee Schedule is reasonable because it is only $0.0001 higher than the current routing fee and remains comparable

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7 See CBOE Stock Exchange, Inc, Fee Schedule (http://www.cboe.com/publish/cbsxfeeschedule/cbsxfee schedule.pdf) and New York Stock Exchange ("NYSE") Arca Fee Schedule (http://www.nyse.com/pdfs/NYSEArca_Equities_Fees.pdf).

to that charged by other Exchanges.[8] This proposed change is equitably allocated and not discriminatory as it applies uniformly to all ETP Holder entering orders that are routed to other market centers.

The proposed "Depth of Book Feed Charge" fee is reasonable as it is comparable to the fees imposed for receipt of proprietary data feeds charged by other market centers.[9] This proposed fee applies uniformly to all parties that receive the DOB feed directly, and, thus, the charge is not discriminatory and equitably allocated. In addition, receipt of the NSX DOB feed is entirely voluntary, and only recipients choosing to receive the feed are subject to the charge.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other market centers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii)

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8 See NASDAQ OMX ("Nasdaq") Fee Schedule (http://www.nasdaqtrader.com/trader.aspx?id=pricelisttrading2).

9 See NYSE Arcabook fee schedule (http://www.nyxdata.com/arcabook) (charging $750/mo. for a data product that includes the NYSE Arca equivalent to the NSX DOB feed).

of the Act[10] and subparagraph (f)(2) of Rule 19b-4[11] thereunder, because, as provided in (f)(2), it changes "a due, fee or other charge applicable only to a member" (known on the Exchange as an ETP Holder). At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NSX-2012-04 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NSX-2012-04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all

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10 15 U.S.C. 78s(b)(3)(A)(ii).

11 17 CFR 240.19b-4.

comments on the Commission's Internet website (http://www.sec.gov/rules/sro/shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the

Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-NSX-2012-04 and should be submitted on or before [insert date 21 days from date of publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill
Deputy Secretary

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12 17 CFR 200.30-3(a)(12).